



U.S. MERIT SYSTEMS PROTECTION BOARD

Case Report for June 9, 2023

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COURT DECISIONS

NONPRECEDENTIAL:

Barbour v. Department of Health & Human Services, No. [2023-1569](#) (Fed. Cir. June 6, 2023) (MSPB Docket No. DC-1221-20-0234-W-1). The court dismissed the petition for review for failure to prosecute in accordance with the rules, due to the petitioner's failure to pay the required docketing fee and file the required brief.

Markham v. Merit Systems Protection Board, No. [2023-1807](#) (Fed. Cir. June 6, 2023) (MSPB Docket No. SF-3443-20-0726-I-1). The court granted the petitioner's unopposed motion to dismiss.

Jolley v. Department of Housing & Urban Development, No. [2022-2061](#) (Fed. Cir. June 7, 2023) (MSPB Docket Nos. SF-0752-13-0583-M-1 & SF-0752-14-0286-M-1). The court granted the agency's motion to waive Federal Circuit Rule 27(f) and dismiss the appeal for lack of jurisdiction. In doing so, the court noted that under 5 U.S.C. § 7703(b)(1)(A), a petition for review of a final order or decision by the Board must be filed with the Federal Circuit within 60 days after the Board issues notice of the final order or decision. The requirement is "mandatory and jurisdictional" and cannot be waived or equitably tolled. Furthermore, to be timely, the petition must actually be received by the court on or before the deadline, not just timely mailed. Here, the Board issued

notice of its final decision on May 20, 2022, and the court received Mr. Jolley's petition 61 days later, on July 20, 2022, a Wednesday. Although Mr. Jolley provided a USPS receipt indicating that he mailed his petition on July 13, 2022, that did not constitute filing with the court, and the receipt's "Estimated Delivery Date" of July 18, 2022 was not sufficient to show actual delivery of the petition any earlier than the stamped date of July 20, 2022.

Chin-Young v. Department of the Army, No. [2023-1587](#) (Fed. Cir. June 8, 2023) (MSPB Docket No. DC-0752-11-0394-C-3). After unsuccessfully challenging the Board's September 2016 final decision in the regional circuit, *Chin-Young v. United States*, 816 F. App'x 857 (4th Cir. 2020), Mr. Chin-Young filed a petition for review with the Federal Circuit in March 2023. The Federal Circuit determined that the petition was untimely filed under 5 U.S.C. § 7703(b)(1)(A), as more than 6 years had passed since the Board's final decision, and it rejected the petitioner's arguments for equitable tolling. The court further noted that it lacked jurisdiction to review the decisions by the district court and the Fourth Circuit. Accordingly, the court dismissed the petition for review.

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